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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**
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**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

State of Utah et al. v. Google LLC et al.,
Case No. 3:21-cv-05227-JD

Case No. 3:21-md-02981-JD

**NOTICE OF MOTION AND MOTION
OF THE AMERICAN ANTITRUST
INSTITUTE FOR LEAVE TO FILE AN
AMICUS CURIAE BRIEF**

Judge: Hon. James Donato

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that the American Antitrust Institute (“Proposed Amicus AAI”)
3 hereby moves this Court to file an amicus curiae brief in support of the Plaintiffs’ Opposition to
4 Defendants’ Motion to Exclude Merits Opinions of Dr. Marc Rysman.

5 This motion seeks leave for Proposed Amicus AAI to file the amicus brief that is attached as
6 Exhibit 1 to this motion. The States and Consumer Plaintiffs consent to the filing of the amicus brief.
7 The Defendant indicated that it opposes the filing but did not give any explanation for its position.

8 Proposed Amicus AAI’s filing is timely because this Court has no established deadline for amicus
9 briefs. The proposed brief is submitted within 8 days of when Plaintiffs’ Opposition was filed and almost
10 two weeks before the Defendant’s reply is due. This schedule gives the Defendants more than sufficient
11 time to review and respond, if necessary, to AAI’s brief, which is less than eight pages long.

12 Courts have broad discretion to permit amicus briefs, and they have exercised “great liberality”
13 in permitting such briefs. *See California ex re. Becerra v. United States Dep’t of the Interior*, 381 F.
14 Supp. 3d 1153, 1164 (N.D.Cal. 2019) (quotation marks omitted). Courts generally welcome third party
15 amicus briefs, where, as here, those briefs concern “legal issues that have potential ramifications beyond
16 the parties directly involved” and “the amicus has unique information or perspective that can help the
17 court beyond the help that the lawyers for the parties are able to provide.” *NGV Gaming, Ltd. V.*
18 *Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (quotation marks omitted).

19 Proposed Amicus AAI is an independent, nonprofit organization devoted to promoting
20 competition that protects consumers, businesses, and society. It engages in research, education, and
21 advocacy on the benefits of competition and educates on the use of antitrust enforcement as a vital
22 component of competition policy. AAI also receives the input of an Advisory Board that consists of
23 over 130 prominent antitrust lawyers, law professors, economists, and business leaders on matters
24 regarding competition policy.¹ AAI has filed numerous amicus briefs on the role of private actions in
25 effective antitrust enforcement. It tracks and reports on class action developments on a routine basis,
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27 ¹ For more information about AAI’s activities, publications, and personnel, *see*
28 <http://www.antitrustinstitute.org>. Individual views of members of the Advisory Board or Board of
Directors may differ from AAI’s positions.

1 and it regularly organizes conferences where expert discuss matters relevant to private antitrust
2 enforcement.² As a result, Proposed Amicus AAI offers this Court a unique perspective, that is broader
3 than the parties can provide, on the significance of Defendant Google’s requested ruling on antitrust
4 enforcement efforts.

5 AAI has a strong interest in the resolution of the Defendant’s Motion to Exclude because it raises
6 issues about the scope of private antitrust enforcement, a key tool in advancing the antitrust laws.
7 Preserving the ability of private action to address the full range of antitrust harms is vital to AAI’s
8 mission of promoting competition.

9 As explained in greater detail in the proposed amicus brief, there are wide-ranging implications
10 to Google’s claim that the harm Dr. Rysman’s report quantifies is not harm to “property” under Section
11 4 of the Clayton Act. In effect, Google’s motion asks this Court to make the sweeping conclusion that
12 damages actions are available only for inflated prices. As a result, this Court’s decision has a potential
13 effect that goes well beyond the parties—namely, the public interest in ensuring that private antitrust
14 enforcement is available for all harms under the antitrust laws. The proposed amicus brief explains that
15 variety, innovation, and consumer choice are fundamental interests that the antitrust laws are designed
16 to protect. It offers AAI’s perspective that it is both incorrect and dangerous to read Section 4 to exclude
17 private antitrust enforcers from addressing such harms. Moreover, the brief points out that the danger is
18 especially acute in cases like this because innovation is the primary means of competition in digital
19 markets. To prevent private antitrust plaintiffs from seeking redress for harms that limit customer choice
20 and innovation is to handicap antitrust enforcement in a way that is particularly harmful in a modern
21 digital economy.

22 For all these reasons, the Court should GRANT the Proposed Amicus AAI’s motion.
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27 ² See <https://www.antitrustinstitute.org/issues/private-enforcement/> for examples of AAI’s work on
28 these topics.

Dated: May 26, 2023

Respectfully submitted,

By: /s/ Joshua P. Davis

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